



Colorado Springs School District 11

1115 North El Paso Street
Colorado Springs, CO 80903

April 27, 2012

Letter of Appeal

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

CC Docket No 02-6

Request for Review of Administrator's Decision on Appeal – Funding Year 2010-2011,
Issued on February 27, 2012

Authorized person who can best discuss this Appeal with you

Richard Larson
eRate 360 Solutions, LLC
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(preferred mode of contact)

Application Information

Entity

Colorado Springs School District 11

Billed Entity Number

142312

<u>FY 2010 471 Number</u>	<u>FY 2010 FRN</u>	<u>MEMO: FY 2009 FRN</u>	<u>SPIN</u>	<u>Service Provider</u>	<u>Annual Cost Revised per FCDL</u>	<u>Rev. Disc.</u>	<u>Revised Funding Request</u>
714290	1944533	1845078	143005231	Qwest Corporation	\$62,674.92	68	\$42,618.95
714290	1944825	1845087	143032782	TW Telecom Holdings	\$99,157.20	68	\$67,426.90
714290	1944829	1903295	143032782	TW Telecom Holdings	\$53,694.00	68	\$36,511.92
					\$215,526.12		\$146,557.77

Document Being Appealed: Administrator's Decision on Appeal (ADL) – Funding Year 2010-2011, Issued on February 27, 2012¹

Decision on Appeal: Denied

Explanation: USAC has determined that the new information that was provided during the appeal review did not support overturning the original denial decision. The applicant has not demonstrated on appeal that price was the highest weighted factor in selecting the service provider for the above funding request (*sic*).

Funds Denied: \$146,557.77 *Note: Our appeal requests restoration of "Revised Funding Request" per the table above. Revised cost and funding numbers are based upon the FCDL Modification Reasons removing Pike Elementary from each FRN.*²

¹ Letter from Schools and Libraries Division, USAC, to Richard Larson, eRate 360 Solutions, consultant for Colorado Springs School District 11, dated February 27, 2012, re: Form 471 Application Number 714290 (ADL).

² Letter from Schools and Libraries Division, USAC, to Carlos Alvarez, Colorado Springs School District 11, dated December 7, 2011, re: Form 471 Application Number 714290 (FCDL).

Request for Review:

Colorado Springs School District 11 (the District) requests that the Commission reverse the appeal decision handed down by Schools and Libraries Division (SLD) denying funding for the FRNs 1944533, 1944825, and 1944829 (see schedule above), and restore the modified funding total of \$146,557.77. The District accepts the minor modifications to these FRNs which lower the funding from the original request of \$156,540.02, but disputes the decisions to deny all of their funding. Price, weighted at 50%, was the primary factor in selecting the winning service provider's proposal for each of the three FRNs. Each of the numerous other factors was weighted much lower than 50%.

Bid Evaluation Process: The District used a two-phase process to bid evaluation and vendor selection:

Phase 1: Each bid is evaluated by the selection committee members using the detailed Evaluation Worksheet. This worksheet is tailored to each service, with factors relevant to that service (the telecommunications form consisted of 22 factors and the internet service form consisted of 13 factors³). The purpose of this phase is two-fold:

- to determine if the proposal includes all requirements laid out in our RFP, or if the proposal should be rejected as not responsive to our RFP.
- to determine the technical validity of the proposal as a cost-effective solution to our requirements.

It is important to note that the factors on the Evaluation Worksheet all become a part of the second phase of the process.

Clarification questions to the vendor generated by this process are asked and answered in writing, and also become part of the second phase.⁴

Phase 2: In the second phase, the numerous factors from Phase 1 and the price of each proposal are evaluated and used to determine the eventual winning bid.

The factors on the Phase 1 Evaluation Worksheets are reconsidered in the light of clarifications from the vendors. Although each of these factors is not directly assigned a weight, collectively they carry 50% of the weight in the scoring. Each of the factors in the Evaluation Worksheet carries a portion of the 50% (i.e.: each of the telecommunications form factors carries an average weight of 2.3% (50%/22), and each of the internet service form factors carries an average weight of 3.8% (50%/13)). Clearly, each Evaluation Worksheet factor has a weight considerably less than the 50% weight for Price.

For the sake of reporting brevity and clarity, once the committee has reached a consensus on the Evaluation Worksheet factors for each vendor, a composite score is assigned to the factors and entered on the selection score sheet.

The price of eligible products and services for the proposals are evaluated,⁵ and a score is assigned to each. This Price score is added to the composite Evaluation Worksheet score to arrive at the Total Points assigned to each bid; the highest score

³ Evaluation Worksheet for Internet Services for RFP S2009-0009. Criterion A is divided into 7 factors; criteria B through G plus the 7 criterion A factors account for the 13 evaluation factors.

⁴ Letter to TW Telecom from Kristine Odom, Colorado Springs School District 11, dated 1/15/2009.

⁵ Price evaluation worksheet for services in FRN 1845087 (these services are in FRN 1944825 for FY 2010).

determines the winning vendor⁶. We request the Commission's appeal team to keep in mind two essential details:

- The mathematical effect of adding the Price score and the composite Evaluation Worksheet score is to assign equal 50% weights to Price and to the composite score of the Evaluation Worksheet factors.
- The 50% weight assigned to the composite score of the Evaluation Worksheet factors directly implies that **each of these factors is distinctly considered in the Phase 2 process and has a weight less than the 50% weight for Price.**

The District is certain that its process follows by the vendor selection team is in accord with the process presented on the SLD web site⁷ to include the vital provision that "Price must be the primary factor." We recognize that our formats and algorithm do not match the suggested process and matrix presented in the SLD web pages; however, the SLD web page clearly states "*This example is **not mandatory** or intended to serve any other purpose than to respond to requests for guidance.*"

Allendale County School District, FCC Order of April 21, 2011 (Allendale):

The District cites the 2011 "*Allendale County School District, Cedar Mountain, North Carolina, et al.*"⁸ decision which reversed a number of USAC funding denials in which USAC stated that price was not the primary factor in the vendor selection process. We believe in the above discussion that we have clearly demonstrated that the process used by the District made price the highest weighted factor out of a large number of factors for each FRN. We recognize that, as was the case for a number of the applicants in *Allendale*, our methodology did not mimic the orthodoxy laid out in the SLD web site; nevertheless, the District strove to thoroughly determine the technical worthiness of each bid and to then weigh those numerous factors, each a fraction of 50% (less than 4% for each factor), and price, weighted at 50%.

Our process:

1. Evaluated every proposal received for each FRN.
2. Eliminated a few for technical infeasibility or for significant gaps in their responses to our RFPs.
3. Evaluated the remaining proposals for each FRN as described above. We note that, for each FRN, the winning proposal for each FRN was the lowest cost bid among the feasible and responsive proposals.

The table below summarizes the results of the process, and is based upon the proposals and evaluation documentation from January of 2009. The District respectfully notes that, per *Allendale*: "... consistent with the policy goals underlying the Commission's competitive bidding rules, the least expensive responsive service offering was ultimately selected ..." ⁹

The District emphasizes that it worked within the spirit if not the letter of the law – price was that primary determining factor over and above any single other factor. There is clearly no defrauding of the E-rate system. Our detailed analysis of many technical factors ensured that the District contracted for the most cost effective solution for each FRN, ensuring that there is no waste.

⁶ Vendor Selection sheet for FRN 1845078 and two other FY 2009-10 FRNs.

⁷ Web page from SLD site: *Step 4: Select the Most Cost-Effective Service Provider*

⁸ DA 11-723, April 21, 2011, "Allendale County School District, Cedar Mountain, North Carolina, *et al.*", File Nos. SLD-415662, et al., CC Docket No. 02-6.

⁹ *Ibid.*, p.7

Vendor Name	Initial Evaluation:			5-year Price	Bid Award
	Feasible	Responsive	Comments		
FY 2010 FRN 1944533 (FY 2009 FRN 1845078, RFP # SR2009-0010) ^{10,11}					
Qwest	Yes	Yes		\$5,497.80	Yes
MicroTech	Yes	Yes		\$5,610.00	No
Integra	No	No	Not technically acceptable; No 5-year price offered	n/a	No
FY 2010 FRN 1944825 (FY 2009 FRN 1845087, RFP # SR2009-0008) ^{11,12}					
Tw Telecom	Yes	Yes		\$9,395.00	Yes
Qwest	Yes	Yes		\$10,760.51	No
PAETEC	Yes	Yes		\$11,995.47	No
MicroTech	No	Yes	No multiplexing equipment (assumed District had its own)	n/a	No
FY 2010 FRN 1944829 (FY 2009 FRN 1903295, RFP # SR2009-0009) ¹³					
Tw Telecom ¹⁴	Yes	Yes	Bandwidth - 200 mbps	\$5,460.00	Yes
Qwest ¹⁵	Yes	Yes	Bandwidth - 200 mbps	\$6,305.24	No
FRII ¹⁶	No	No	Maximum bandwidth 100 mbps	n/a	No
BOCES ¹⁷	No	No	Maximum bandwidth 100 mbps	n/a	No

Finally, the District respectfully asks the Commission to bear in mind the devastating impact upon the financial wellbeing of the Colorado Springs school system and community if the USAC denials are not overturned. Not only is the \$146,557 of funding for FY 2010-11 at stake, but the funding for the full five years for the contracts behind these FRNs. We contend that there is no value to the general public in denying our District nearly \$750,000 of funding because our bid evaluation and vendor selection process does not follow the recommended (as opposed to mandatory) format in the SLD web site. We believe that our explanations and documentation validate that the District's process is objective and thorough, and that it places the highest weight on the price of eligible services.

¹⁰ S2009-0010 FRN proposal comparison sheet 6-24-2009

¹¹ Letter from Ray Caplinger, Director Networking and Telecommunications, and Kris Odom, Executive Director Procurement, Colorado Springs School District 11, dated 4/26/2012.

¹² S2009-0008 FRN proposal comparison sheet 6-24-2009

¹³ We are unable to provide the FRN Proposal Comparison Sheet for this FRN. Certain of our documentation is in the possession of our former E-rate consultant, who has not provided us with all documents that we have requested from him. We are providing key pages from the proposal of each of the bidders for this FRN.

¹⁴ Proposal from TW Telecom Holdings, Inc., dated 1/5/2009; introductory pages and pricing page for five years of 200 mbps service.

¹⁵ Proposal from Qwest, dated 1/5/2009; introductory pages and pricing page for five years of 200 mbps service.

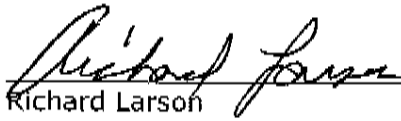
¹⁶ Proposal from Front Range Internet, Inc., dated 1/5/2009; introductory pages and pricing page for 100 mbps, their sole level of service.

¹⁷ Proposal from Centennial Board of Cooperative Educational Services, dated 1/2/2009; introductory pages and pricing page for 100 mbps, their sole level of service.

Conclusion:

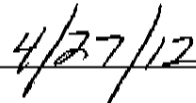
Colorado Springs School District 11 (the District) requests that the Commission reverse the appeal decision handed down by SLD denying funding for FRNs 1944533, 1944825, and 1944829, and restore a modified funding total of \$146,557.77. The District accepts the minor modifications to these FRNs which lower the funding from the original request of \$156,540.02, but disputes the decisions to deny all of their funding. Price, weighted at 50%, was the primary factor in selecting the winning service provider's proposal for each of the three FRNs. Each of the numerous other factors was weighted much lower than 50%.

The District appreciates the Commission's consideration of this appeal. We are available to respond to questions or to provide any further information requested by the Commission.

Authorized signature for this Appeal¹⁸


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322 Route 46W, Suite 280W
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Date: _____



¹⁸ "Letter of Agency" from Murray Basinger, District Contracting Officer for Colorado Springs School District 11, authorizing employees of eRate 360 Solutions, LLC, to perform e-rate services on behalf of the District.



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2010-2011

February 27, 2012

Richard Larson
eRate 360 Solutions, LLC
322 Route 46W, Suite 280W
Parsippany, NJ 07054

Re: Applicant Name: COLORADO SPRINGS SCH DIST 11
Billed Entity Number: 142312
Form 471 Application Number: 714290
Funding Request Number(s): 1944533, 1944825, 1944829
Your Correspondence Dated: February 06, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2010 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1944533, 1944825, 1944829
Decision on Appeal: **Denied**
Explanation:

- USAC has determined that the new information that was provided during the appeal review did not support overturning the original denial decision. The applicant has not demonstrated on appeal that price was the highest weighted factor in selecting the service provider for the above funding request. Your appeal is denied.

Competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). New products and/or services include tariff telecommunications services that are NOT subject to an existing, binding, written contract.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Richard Larson
eRate 360 Solutions, LLC
322 Route 46W, Suite 280W
Parsippany, NJ 07054

Billed Entity Number: 142312
Form 471 Application Number: 714290
Form 486 Application Number:



Universal Service Administrative Company

Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2010: 07/01/2010 - 06/30/2011)

December 7, 2011

Carlos Alvarez
COLORADO SPRINGS SCH DIST 11
3005 Monaghan Dr
Ormond Beach, FL 32174

Re: Form 471 Application Number: 714290
Billed Entity Number (BEN): 142312
Billed Entity FCC RN: 0016827644
Applicant's Form Identifier: CO CO Springs

Thank you for your Funding Year 2010 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$148,800.87 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - Form 471 Application Number 714290 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2010," AND
 - The exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Billed Entity Name: COLORADO SPRINGS SCH DIST 11
BEN: 142312
Funding Year: 2010

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><> MR2: PIKE ELEMENTARY SCHOOL#94433, LONGFELLOW ELEMENTARY SCHOOL#94447, and JEFFERSON ELEMENTARY SCHOOL#94448 has been removed from Block 4, Worksheets 1161767, 1161768, and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR3: ACHIEVE K-12 #16065724 has been added to Block 4, Worksheet #1161767 and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR4: The shared discount percentage was reduced to a level that could be validated by third party data.

Form 471 Application Number: 714290
Funding Request Number: 1944533
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 622020000712076
SPIN: 143005231
Service Provider Name: CenturyLink Qwest Corporation
Contract Number: C2009-0160
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 02/09/2009
Contract Expiration Date: 06/30/2014
Shared Worksheet Number: 1161767
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$65,973.60
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$65,973.60
Discount Percentage Approved by the USAC: 68%
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: MR1: The amount of the funding request was changed from \$5,497.80 per month to \$5,222.91 per month to remove the ineligible entity Pike elementary#94433 for \$274.89 per month. <><><><> DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in selecting the winning service provider's proposal. <><><><> DR2: FCC rules require that the value of free products and services be factored into the evaluation of the most cost-effective provider of eligible products and services. This requirement was not met.
FCDL Date: 12/07/2011
Wave Number: 077
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2012

FUNDING COMMITMENT REPORT
Billed Entity Name: COLORADO SPRINGS SCH DIST 11
BEN: 142312
Funding Year: 2010

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><> MR2: PIKE ELEMENTARY SCHOOL#94433, LONGFELLOW ELEMENTARY SCHOOL#94447, and JEFFERSON ELEMENTARY SCHOOL#94448 has been removed from Block 4, Worksheets 1161767, 1161768, and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR3: ACHIEVE K-12 #16065724 has been added to Block 4, Worksheet #1161767 and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR4: The shared discount percentage was reduced to a level that could be validated by third party data.

Form 471 Application Number: 714290
Funding Request Number: 1944825
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 522140000690516
SPIN: 143032782
Service Provider Name: TW Telecom Holdings, Inc.
Contract Number: C2009-0158
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 02/04/2009
Contract Expiration Date: 06/30/2014
Shared Worksheet Number: 1161767
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$99,157.20
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$99,157.20
Discount Percentage Approved by the USAC: 68%
Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: MR1: The amount of the funding request was changed from \$8,698 per month to \$8,263.10 per month to remove the ineligible entity Pike elementary#94433 for \$434.90 per month <><><><> DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in selecting the winning service provider's proposal.
FCDL Date: 12/07/2011
Wave Number: 077
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2012

FUNDING COMMITMENT REPORT
Billed Entity Name: COLORADO SPRINGS SCH DIST 11
BEN: 142312
Funding Year: 2010

Comment on RAL corrections: MR1: Block 1 of the Form 471 was modified in accordance with the applicant's request. <><><><> MR2: PIKE ELEMENTARY SCHOOL#94433, LONGFELLOW ELEMENTARY SCHOOL#94447, and JEFFERSON ELEMENTARY SCHOOL#94448 has been removed from Block 4, Worksheets 1161767, 1161768, and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR3: ACHIEVE K-12 #16065724 has been added to Block 4, Worksheet #1161767 and 1161770 of the Form 471 application at the request of the applicant. <><><><> MR4: The shared discount percentage was reduced to a level that could be validated by third party data.

Form 471 Application Number: 714290
Funding Request Number: 1944829
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 271190000701908
SPIN: 143032782
Service Provider Name: TW Telecom Holdings, Inc.
Contract Number: C2009-0159
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2010
Service End Date: N/A
Contract Award Date: 02/09/2009
Contract Expiration Date: 07/31/2014
Shared Worksheet Number: 1161767
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$53,694.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$53,694.00
Discount Percentage Approved by the USAC: 68%
Funding Commitment Decision: \$0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: MR1: The amount of the funding request was changed from \$4,710 per month to \$4,474.50 per month to remove the ineligible entity Pike elementary#94433 for \$235.50 per month <><><><> MR2: The Contract Expiration Date was changed from 06/30/2014 to 07/31/2014 to agree with the documentation provided during the review of the Form 471. <><><><> DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in selecting the winning service provider's proposal.
FCDL Date: 12/07/2011
Wave Number: 077
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2012

**Evaluation Worksheet
RFP S2009-0009
E-Rate Internet Services**

Offeror:

Evaluator Name:

Evaluation Criteria	Strengths	Weaknesses or Inadequacies	Clarification Questions
A) Evaluate each provider's demonstrated understanding and approach to providing internet services as specified in the statement of need as follows:			
1) The vendor shall provide internet service beginning with 100 MBPS Ethernet to the Central Administration site at 711 E San Rafael. Firewall, remote access and content filtering services are provided to the District through other District means.			
2) Service Level Guarantees/ Agreement: provide documentation on what your service provides. Address the following in your response: a. What type of monitoring is conducted? b. Describe your service levels for data connectivity and network reliability (on a 7.24.365 basis) c. How often does monitoring occur and how is it reported? d. What types of service/throughput			

<p>benchmarks are used?</p> <p>e. Network packet delivery statistics.</p> <p>f. Minimal network jitter</p> <p>g. Automatic network outage management notifications</p> <p>h. Escalation procedures for problem resolution for data connectivity, reliability, security, and billing issues.</p>			
3) Identify and discuss your circuit and service quality monitoring and reporting services.			
4) Provide in detail your proposed system(s) and functionality. Wireless solutions will not be considered.			
5) Vendor must provide current Annual report and audited financial statements.			
6) Vendor shall provide pricing schedules for all levels of services available, including monitoring services, reduced response times, and after hours support.			
<p>7) Billing Requirements:</p> <p>a. Detail of all charges and an explanation as to their billing calculation methodology.</p> <p>b. Shall provide monthly invoicing.</p> <p>c. Billing shall be consolidated to combine usage at multiple locations for greater volume</p>			

discounts. d. Vendor shall submit sample billing statements and reports. e. Vendor shall provide billing access on line via a web access. Vendor shall describe web access/internet access. f. Vendor shall provide a representative to manage the District's account.			
B) Evaluate how the offeror reconciled billing questions and corrected billing errors. (Past Performance).			
C) Evaluate the circuit and service quality monitoring and reporting.			
D) Evaluate the offeror's proposed mean time between failure and mean time to repair metrics.			
E) Evaluate the offereor's proposed system functionality and scalability.			
F) Evaluate the Vendor's market stability.			
G) Past performance/ customer satisfaction evaluation. (See separate past performance evaluation sheet.)	N/A	N/A	

January 15, 2009

TW Telecom
102 S. Tejon, Suite 210
Colorado Springs, CO 80903

References: a. Request for Proposal S2009-0009, Internet Service Provider (ISP)
Service (E-rate)
b. TW Telecom Proposal dated January 5, 2009

Attn: Mark Maynard, Sales Manager

1. Congratulations! Your firm has been selected to enter the next phase of this solicitation. We are asking offerors in this phase to participate in discussions in person. **Your firm has been scheduled for Wednesday January 21, 2009 from 1:30 pm to 2:30pm (MST).** Discussions will be held in the IT-A Conference Room located at 711 E. San Rafael St, Colorado Springs, CO 80903.
2. Our intent is to have your firm provide a detailed overview of your approach, answer the below questions and have a robust interactive question and answer period that may include answering a scenario. Since we have a limited amount of time, we would like you to spend about 15 minutes responding to the below questions. The remaining time would then allow for an interactive question and answer forum. You may bring any additional materials to present, please bring five (5) copies for our use.
3. We would like your firm to respond to the following questions in writing **no later than the January 20, 2009 4:00pm MST**; email response to me, odomkr@d11.org, is acceptable:
 - a. We would like more clarification on the connection to our NOC. Specifically Does your proposal include connecting to our existing equipment (CISCO 3750) or is TW Telecom providing their own equipment to connect into? Your proposal indicates on page 5, different pricing options that deploy different equipment; however in reviewing your pricing arrangements, it is not

clear which arrangement is “scenario one”, “scenario two” or “off-net Type II”—please clarify.

- b. Please elaborate on the cutover/transition plan that your proposal reflects a 12 days timeframe. If we want a July 1, 2009 service start date, when would you begin doing what in coordination with the District?
 - c. Reference your pricing, please elaborate on your statement “Pricing is contingent upon available facilities and or capability and subject to determination by TW Telecom.”
 - d. Please provide pricing information at 100Mbps up to 1Gbps at 100 increments for the 60 month period. We are requesting firm fixed pricing over the period of the contract and would like to know if pricing decreases, would we be able to realize any cost savings over the 60 month period?
 - e. Please verify if you can provide DNS service and if so what service capability and pricing options are available?
4. If you have any questions or need clarification, I can be reached at 719.520.2030.

Kristine R. Odom, CPPO
District Contracting Officer
Phone: 719.520.2030
Fax: 719.577.4528
odomkr@d11.org

Item	Qwest 60 month	TW Telecom Dual Fiber Entrance 60 months
1. OC3 w/sharp	\$3,180	(DIDs) \$1,110
2. T1 ISDN PRI	\$5,100	(Qty 12) \$3,900
3. PS/ALI 911 Svc over PRI D Channels	\$408.80	N/A
DS3 Central Mux Port Customer Prem DS3 Mux Port COCC Per DS3 Port	 Total: \$372	N/A
10 PTP	\$1,325.78	\$3,020
Design 1	N/A	N/A We are not taking this option.
TOTAL Monthly Recurring (no LD)	\$10,386.58	\$8,030
Long Distance based on MPC	Same est of mins \$264.46	N/A (60,000 free mins included in fee)
Est Monthly Total including LD	1287 mins x \$.04 = \$51.48 per month	Only applies to switched (1fb lines) based on 1287 mins @ \$.155 = \$199.49; at \$.07 = \$90.09
Grand Monthly Recurring	\$10,702.52	\$8,229.49 (Delta of \$2,473.03/mo)

FRN 1845078

Company	Qwest	Integra	MicroTech Tel
Bid Quote	\$5,497.80	Not Technically acceptable	\$5,610.00
Price	5		4
Scoring Sheet Criteria	3		3
TOTAL POINTS	8	0	7

* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5

Winning Vendor: Qwest - selected on best value - meeting the criteria placed within the RFP and Price.

FRNs 1903693 & 1903718

✓ *FRN 2072513 + FRN 2011165*
Information Systems Consulting
 Company
 Bid Quote \$2,995.00

Price	5
Scoring Sheet Criteria	3
TOTAL POINTS	8

* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5

Winning Vendor: Information Systems Consulting - selected on best value - meeting the criteria placed within the RFP and Price. Sole bidder.

NOTE 7

Step 4: Select the Most Cost-Effective Service Provider

Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price as the primary factor.

Waiting Period. At the conclusion of the 28-day waiting period after the *Description of Services Requested and Certification Form* (Form 470) is posted on the USAC website, the applicant may select a vendor for tariffed or month-to-month services or execute a contract for new contractual services.

Bid Evaluation. Applicants must construct an evaluation for consideration of bids received in response to the posting of the Form 470 that makes price the primary factor in the selection of a vendor.

Contract Guidance. Applicants may also choose vendors from a State Master Contract, execute multi-year contracts pursuant to a Form 470, and enter into voluntary contract extensions, but certain additional contract requirements apply. In all cases, applicants must comply with state and local procurement laws.

Document Retention. Applicants must save all documentation pertaining to the competitive bidding process and vendor selection for five years. Applicants must certify and acknowledge on the Form 470 and the *Services Ordered and Certification Form* (Form 471) that they may be audited and that they must retain all records that can verify the accuracy of information provided.

Step 3 Open a Competitive bidding Process

Step 5 Calculate the Discount Level

Last modified on 1/6/2006



Step 4: Construct An Evaluation

Price must be the primary factor when constructing the evaluation of bid responses.

When an applicant examines and evaluates the bids received for eligible services, it must select the most cost-effective bid. This means that the price should be the primary factor, but does not have to be the sole factor. Other relevant factors may include: prior experience including past performance; personnel qualifications including technical excellence; management capability including schedule compliance; and environmental objectives.

For example, the following would be an acceptable weighting of the factors listed above to use in evaluating bid responses, as price is weighted higher than any other single factor:

Factor	Weight
Price	30%
Prior experience	25%
Personnel qualifications	20%
Management capability	15%
Environmental objectives	10%
Total	100%

Note that the value or price competitiveness of services or products that are **ineligible** for support cannot be factored into the evaluation of the most cost-effective supplier of eligible services.

For example, Service Provider A offers a price for eligible services of \$1,000.

Service Provider B offers a price for the same services for \$1,200, but this price includes \$900 of eligible services and \$300 of ineligible services to be provided at no additional cost to the applicant.

The value of the "free" software or hardware offered by Service Provider B cannot be factored into the evaluation of the most cost-effective supplier of eligible services. All other things being equal, Service Provider A is offering the most cost-effective bid for services eligible for support.

Step 3 Open a Competitive bidding Process

Step 5 Calculate the Discount Level

Last modified on 1/6/2006

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Bid Evaluation Matrix (Points Based) SAMPLE

There have been many requests for USAC to provide guidance with respect to what information should be included as you conduct your bidding process. Below is an example of information that may be helpful. In addition, retaining this type of information will be very helpful if USAC requests this information in the future. This example is not mandatory or intended to serve any other purpose than to respond to requests for guidance.

In this example, each factor is worth the same number of points as the weighting percentage. Vendors are rated on how well they met each factor. The entries for all factors are then totaled for each vendor. The winning bidder is the one with the highest number of total points. The cost of the eligible goods and services must be weighted most heavily.

No	Factors	Total Points Available	Vendor 1 143xxxxxx ABC Inc.	Vendor 2 143xxxxxx DEF Inc.	Vendor 3 143xxxxxx GHI Inc.	Vendor 4 143xxxxxx JKL Inc.
1	<i>Cost of the Eligible Goods and Services</i>	40 *	38	25	38	0
2	<i>Experience</i>	20	18	17	20	0
3	<i>Availability</i>	10	10	8	7	0
4	<i>Minority Business Status</i>	10	6	9	9	0
5	<i>In State Preference</i>	10	3	7	10	
6	<i>Cost of the Ineligible products</i>	5	4	1	5	
7	<i>Project Management Expertises</i>	5	2	1	5	
Total Points		100	81	68	94	0

* This number must be higher than all of the other numbers in this column.

Winning Bidder:

Vendor 3 (GHI, Inc.) is the winning bidder because it has the highest total points.

Disqualified Bidders:

Bidder Reason for Disqualification

JKL Inc All interested bidders received two weeks' notice of a required pre-bid conference.

JKL Inc. did not attend this conference and did not provide a reason for its absence.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Allendale County School District)	File Nos. SLD-415662, <i>et al.</i>
Cedar Mountain, North Carolina, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 21, 2011

Released: April 21, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address 19 appeals of decisions by the Universal Service Administrative Company (USAC) denying requests for funding under the E-rate program (more formally, the schools and libraries universal service support program).¹ USAC denied funding to the petitioners on the grounds that the underlying applications violated the Commission's competitive bidding requirements because they either did not consider price as the primary factor in the vendor selection process or they did not carefully consider all bids submitted in response to their FCC Form 470 postings. Upon review of the record, we find that seven of the petitioners did not violate the Commission's competitive bidding requirements.² In 12 other instances, we find that a waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest.³ We therefore grant these appeals and remand the associated applications to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the appendices and issue a decision no later than 120 calendar days from the release date of this order.

¹ See Appendices A-C for a list of appeals. In this order, we use the term "appeals" to refer generally to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Appendices A and C.

³ See Appendix B; 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a). Irving Independent School District filed two separate appeals for its FCC Form 471 applications submitted in funding years (FY) 2005 and 2006. See Appendix B.

II. BACKGROUND

2. *E-rate Program Rules and Requirements.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁴ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁵ Applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁷ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.⁸ The RFP must be available to all potential bidders for the duration of the bidding process.⁹ The Commission has determined that a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's FCC Form 470.¹⁰

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹ The applicant must consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹² Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹³ USAC assigns a funding request number (FRN) to each

⁴ 47 C.F.R. §§ 54.501-54.502.

⁵ 47 C.F.R. § 54.503. An existing contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements. *See* 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. § 54.503(c).

⁷ *Id.*

⁸ *See, e.g.,* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2010) (current FCC Form 470).

⁹ *See* FCC Form 470.

¹⁰ *See Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033 (2000) (*Mastermind Order*).

¹¹ 47 C.F.R. § 54.503(c). *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008).

¹² 47 C.F.R. § 54.511(a).

¹³ *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2010) (current FCC Form 471).

request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹⁴

4. *Price as the Primary Factor in Selecting a Vendor.* Under the Commission's competitive bidding rules, applicants must select the most cost-effective service offerings, and price must be the primary factor in determining whether a particular vendor is the most cost-effective.¹⁵ Applicants may also consider relevant factors other than the pre-discount prices submitted by providers, such as prior experience, personnel qualifications, management capability, and environmental objectives.¹⁶ When evaluating bids, however, applicants must have a separate "cost category" and that category must be given more weight than any other single factor.¹⁷

5. *State Master Contracts.* Applicants may purchase eligible services from "master contracts" negotiated by a third party such as a governmental entity.¹⁸ The third party initiating the master contract must comply with the Commission's competitive bidding requirements and state procurement laws.¹⁹ An applicant is not required to satisfy the competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption.²⁰ If a third party has negotiated a master contract without complying with the competitive bidding requirements, then the applicant must comply with the competitive bidding requirements before it may receive discounts or reduced rates for services purchased from that master contract.²¹ The applicant must certify such compliance when submitting its FCC Form 471 application.²² Compliance with state and local procurement requirements does not relieve a school from its obligation also to follow E-rate procurement procedures.²³

¹⁴ See USAC website, Schools and Libraries, Funding Commitment Decision Letter (FCDL), <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited Apr. 4, 2011).

¹⁵ 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*).

¹⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9029-30, para. 481; see also 47 C.F.R. § 54.511(a).

¹⁷ *Ysleta Order*, 18 FCC Rcd at 26429, para. 50. For example, if an applicant assigns 10 points to reputation and 10 points to past experience, the applicant would be required to assign at least 11 points to price. *Id.* at n.138.

¹⁸ See 47 C.F.R. § 54.500(g) (defining "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider).

¹⁹ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997) (*Fourth Reconsideration Order*).

²⁰ *Id.* at 5452-53, para. 233; see also *supra*, paras. 2-3.

²¹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233.

²² See FCC Form 471, Block 6.

²³ See *Ysleta Order*, 18 FCC Rcd at 26424-26, paras. 41-44.

6. *Requests for Review.* The petitioners submitted their FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services.²⁴ Subsequently, the petitioners entered into contracts with their respective service providers and filed their FCC Form 471 applications for funding years (FYs) 2003-2008.²⁵ USAC denied the petitioners' applications on the grounds that the petitioners violated the Commission's competitive bidding rules.²⁶ Specifically, the petitioners' requests for funding

²⁴ FCC Form 470, Allendale County School District (posted Dec. 19, 2003); FCC Form 470, Benson Unified School District 9 (posted Mar. 29, 2000); FCC Form 470, Chesterfield County School District (posted Jan. 3, 2007); FCC Form 470, Compton Unified School District (posted Nov. 18, 2003); FCC Form 470, Florence County School District 3 (posted Dec. 21, 2004); FCC Form 470, Galena Park Independent School District (posted Nov. 4, 2004); FCC Form 470, Hmong Academy Charter School (posted Dec. 12, 2005); FCC Form 470, Goose Creek Consolidated Independent School District (posted Nov. 17, 2003); FCC Form 470, Irving Independent School District (posted Dec. 10, 2003); FCC Form 470, Killeen Independent School District (posted Dec. 20, 2003); FCC Form 470, Lee County School District (posted Dec. 6, 2004); FCC Form 470, Meridian Joint School District 2 (posted Dec. 30, 2005); FCC Form 470, Our Lady of Fatima School (posted Nov. 29, 2005); FCC Form 470, Point Pleasant Board of Education (posted Sept. 16, 2003); FCC Form 470, Richland County School District 1 (posted Oct. 10, 2003); FCC Form 470, School District of the City of River Rouge (posted Jan. 8, 2003) (River Rouge FCC Form 470); FCC Form 470, St. Cecilia School (posted Nov. 19, 2007); FCC Form 470, Whittier City School District (posted Jan. 17 2006) (Whittier FCC Form 470).

²⁵ FCC Form 471, Allendale County School District (filed Jan. 30, 2004); FCC Form 471, Benson Unified School District 9 (filed Feb. 16, 2005) (Benson FCC Form 471); FCC Form 471, Chesterfield County School District (filed Feb. 7, 2007); FCC Form 471, Compton Unified School District (filed Feb. 4, 2004); FCC Form 471, Florence County School District 3 (filed Jan. 28, 2005); FCC Form 471, Galena Park Independent School District (filed Feb. 8, 2005) (Galena Park FCC Form 471); FCC Form 471, Goose Creek Consolidated Independent School District (filed Feb. 2, 2004); FCC Form 471, Hmong Academy (filed Feb. 7, 2006); FCC Form 471, Irving Independent School District (filed Feb. 15, 2005); FCC Form 471, Irving Independent School District (filed Feb. 15, 2006); FCC Form 471, Killeen Independent School District (filed Feb. 2, 2004); FCC Form 471, Lee County School District (filed Jan. 31, 2005); FCC Form 471, Meridian Joint School District 2 (filed Feb. 16, 2006); FCC Form 471, Our Lady of Fatima School (filed Feb. 8, 2006); FCC Form 471, Point Pleasant Board of Education (filed Feb. 3, 2004); FCC Form 471, Richland County School District 1 (filed Feb. 13, 2006); FCC Form 471, School District of the City of River Rouge (filed Feb. 6, 2003); FCC Form 471, St. Cecilia School (filed Feb. 7, 2008); FCC Form 471, Whittier City School District (filed Feb. 16, 2007).

²⁶ See Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Allendale County School District (dated Mar. 24, 2005) (Allendale FCDL); Letter from USAC, Schools and Libraries Division, to Rubin Cochran, Benson Unified School District (dated Nov. 2, 2005) (Benson FCDL); Letter from USAC, Schools and Libraries Division, to John Wagnon, Chesterfield County School District (dated Nov. 29, 2007) (Chesterfield FCDL); Letter from USAC, Schools and Libraries Division, to Kevin Evans, Compton Unified School District (dated June 30, 2004) (Compton FCDL); Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Florence County School District 3 (dated May 5, 2006) (Florence FCDL); Letter from USAC, Schools and Libraries Division, to Dr. Jeffrey Lorentz, Galena Park Independent School District (dated May 5, 2006) (Galena Park FCDL); Letter from USAC, Schools and Libraries Division, to Frankie Jackson, Goose Creek Consolidated Independent School District (dated May 10, 2005) (Goose Creek FCDL); Letter from USAC, Schools and Libraries Division, to Christianna Hang, Hmong Academy (dated Apr. 17, 2007) (Hmong FCDL); Letter from USAC, Schools and Libraries Division, to Alice Owen, Irving Independent School District (dated Nov. 9, 2005) (Irving 2005 FCDL); Letter from USAC, Schools and Libraries Division, to Alice Owen, Irving Independent School District (dated Sept. 19, 2006) (Irving 2006 FCDL); Letter from USAC, Schools and Libraries Division, to Michael Bernstein, Killeen Independent School District (dated Dec. 4, 2004) (Killeen FCDL); Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Lee County School District (dated Dec. 14, 2005) (Lee County FCDL); Letter from USAC, Schools and Libraries Division, to Jill Hernandez, Our Lady of Fatima School (dated Dec. 27, 2006) (Fatima School FCDL); Letter from USAC, Schools and Libraries Division, to Denise DeRosa, Point Pleasant Board of Education (dated April 26, 2004) (Point Pleasant FCDL); Letter from USAC, Schools and Libraries Division, to Jeff Ostendorf, Richland County School District 1 (Feb. 6, 2007) (Richland FCDL); Letter from USAC, Schools and Libraries Division, to Donald Fitzpatrick, School District of the City of

were denied because USAC found that the petitioners either did not consider price as the primary factor in the vendor selection process or did not carefully consider all bids submitted in response to their FCC Form 470 postings.²⁷ USAC later affirmed these decisions on appeal.²⁸ The petitioners then filed the instant requests for review with the Commission.²⁹

III. DISCUSSION

7. We grant these 19 appeals and remand to USAC for further processing.³⁰ In 17 appeals, USAC denied the petitioners' funding requests because USAC found that the petitioners did not consider price as the primary factor.³¹ In five of these 17 instances, we find that the petitioners selected their respective vendors using price as the primary consideration in accordance with E-rate program rules.³² For the remaining 12 instances, we find that a waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection

River Rouge (dated June 30, 2003) (River Rouge FCDL); Letter from USAC, Schools and Libraries Division, to Dan Ladik, St. Cecilia School (dated July 22, 2008) (St. Cecilia FCDL); Letter from USAC, Schools and Libraries Division, to Jamie Mayhew, Whittier City School District (dated Nov. 14, 2006) (Whittier FCDL) (collectively referred to as FCDLs); *see also* Letter from USAC, Schools and Libraries Division, to Jerry Reininger, Meridian Joint School District 2 (dated Oct. 14, 2008) (Meridian Commitment Adjustment Letter (COMAD)).

²⁷ *See* FCDLs.

²⁸ *See* Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Allendale County School District (dated Mar. 9, 2006); Letter from USAC, Schools and Libraries Division, to Connie Ayres, Benson Unified School District 9 (dated July 3, 2007); Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Florence County School District 3 (dated Aug. 23, 2006); Letter from USAC, Schools and Libraries Division, to Mike Seale, Galena Park Independent School District (dated Aug. 8, 2006); Letter from USAC, Schools and Libraries Division, to Frankie Jackson, Goose Creek Consolidated Independent School District (dated Sept. 21, 2005); Letter from USAC, Schools and Libraries Division, to Christianna Hang, Hmong Academy (dated July 23, 2007); Letter from USAC, Schools and Libraries Division, to Alice Owen, Irving Independent School District (dated Feb. 22, 2006); Letter from USAC, Schools and Libraries Division, to Alice Owen, Irving Independent School District (dated Jan. 3, 2007); Letter from USAC, Schools and Libraries Division, to Michael Bernstein, Killeen Independent School District (dated Oct. 30, 2006); Letter from USAC, Schools and Libraries Division, to Tom Traywick, on behalf of Lee County School District (dated Aug. 8, 2006); Letter from USAC, Schools and Libraries Division, to Jill Hernandez, Our Lady of Fatima School (dated Feb. 13, 2007); Letter from USAC, Schools and Libraries Division, to Denise DeRosa, Point Pleasant Board of Education (dated Sept. 19, 2005); Letter from USAC, Schools and Libraries Division, to Walter Fox, Richland County School District 1 (dated Mar. 27, 2007); Letter from USAC, Schools and Libraries Division, to Dan Ladik, St. Cecilia School (dated Sept. 5, 2008); Letter from USAC, Schools and Libraries Division, to Reinera Dixon, Whittier City School District (dated Mar. 15, 2007) (collectively referred to as Administrative Decision Letters (ADLs)). Note that Chesterfield, Compton, and River Rouge submitted appeals of USAC's FCDLs with the Commission.

²⁹ *See* Appendices A-C.

³⁰ We estimate that the appeals granted in this order involve applications for approximately \$3.4 million in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2010 (Aug. 2, 2010). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

³¹ *See* Benson FCDL; Chesterfield FCDL; St. Cecilia FCDL; Florence FCDL; Galena Park FCDL; Goose Creek FCDL; Allendale FCDL; Fatima FCDL; Hmong FCDL; Irving 2005 FCDL; Irving 2006 FCDL; Killeen FCDL; Lee County FCDL; Meridian COMAD; Richland FCDL; Compton FCDL; Point Pleasant FCDL.

³² *See* Appendix A.

process, is in the public interest.³³ USAC also denied two petitioners' funding requests because USAC found that the petitioners did not carefully consider all bids submitted in response to their FCC Form 470 postings.³⁴ We find that these two petitioners carefully considered all bids submitted in response to their FCC Form 470 postings and, therefore, did not violate the Commission's rules. We discuss these groups of appeals separately, below.

8. Price as the Primary Factor in Selecting a Vendor. USAC denied 17 petitioners' funding requests on the ground that they failed to use price as the primary factor in their respective vendor selection processes.³⁵ Specifically, USAC rejected these funding requests because the petitioners did not provide documentation demonstrating that price was given the highest weight during their respective bid evaluation processes.³⁶

9. We find that the five petitioners listed in Appendix A gave the most weight to price when evaluating bids.³⁷ The record shows that each applicant submitted documentation to USAC detailing the

³³ See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a); Appendix B. Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

³⁴ See Appendix C.

³⁵ See Benson FCDL; Chesterfield FCDL; St. Cecilia FCDL; Florence FCDL; Galena Park FCDL; Goose Creek FCDL; Allendale FCDL; Fatima FCDL; Hmong FCDL; Irving 2005 FCDL; Irving 2006 FCDL; Killeen FCDL; Lee County FCDL; Meridian COMAD; Richland FCDL; Compton FCDL; Point Pleasant FCDL. We note that during post-funding review, USAC determined that Killeen, Compton, and Meridian failed to provide documentation to indicate that price was the primary factor in the vendor selection process. See Killeen Request for Review at 4-5; Compton Request for Review at 1; Meridian Request for Review at 2. Killeen, Compton, and Meridian were then subject to funding commitment adjustments by USAC, whereby USAC rescinded their funding commitments. See Killeen Request for Review at 4-5; Compton Request for Review at 1; Meridian Request for Review at 2. In light of our decision herein, we direct USAC to discontinue recovery actions against Killeen, Compton, and Meridian pending completion of its review of Killeen, Compton, and Meridian's underlying applications on remand.

³⁶ See Benson FCDL; Chesterfield FCDL; St. Cecilia FCDL; Florence FCDL; Galena Park FCDL; Goose Creek FCDL; Allendale FCDL; Fatima FCDL; Hmong FCDL; Irving 2005 FCDL; Irving 2006 FCDL; Killeen FCDL; Lee County FCDL; Meridian COMAD; Richland FCDL; Compton FCDL; Point Pleasant FCDL.

³⁷ See 47 C.F.R. § 54.723 (setting forth the Wireline Competition Bureau's obligation to conduct a *de novo* review of appeals of decisions made by USAC). Allendale considered five criteria, including cost, which was given the highest weight. In order to break a tie between two vendors receiving the same rating, however, Allendale re-evaluated the cost-effectiveness of each vendor's bid, which included a review of whether the vendor had knowledge of the district's network, facilities, staff, and the type of technical support that would be available. See Allendale Request for Review at 2-3. Chesterfield considered 16 criteria, including cost, which was 30 percent of the total evaluation weighting, while the next most heavily weighted factor represented 25 percent. See Chesterfield Request for Review at Exhibit B. Goose Creek evaluated eight criteria. Two criteria, price and long-term costs, related to price and, when combined, had more weight than any other evaluation criteria. See Goose Creek Request for Review at 1, Attachment 1. Richland considered five criteria in its evaluation process, including a cost criterion, which was 25 percent of the total evaluation weighting. See Richland Request for Review at 2. The next most heavily weighted factor represented 20 percent of the total evaluation weighting. *Id.* Richland states that it selected the vendor with the highest number of cumulative points. *Id.* at 2-5, Exhibit C. Compton asserts that it selected a

competitive bidding process, including bid requests, bid proposals, and cost evaluation criteria.³⁸ We find no evidence in the record that these petitioners failed to conduct a competitive bidding process that adhered to relevant state and local procurement laws.³⁹ Based on these factors, we find that the petitioners' competitive bidding processes did not violate program rules. In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements.

10. USAC also determined that the 11 petitioners listed in Appendix B, who in the aggregate are appealing the denial of 12 applications, failed to assign the highest weight to the price category during their respective bid evaluations, and thus violated the Commission's competitive bidding requirements.⁴⁰ We agree with USAC's determination that the petitioners did not comply with the Commission's rule to assign the highest weight to price when evaluating bids. Nevertheless, the record shows that for seven petitioners,⁴¹ the winning vendor's cost proposal was lower than the competing bids and therefore the applicants selected the least expensive service offering.⁴² With regard to three other petitioners, Killeen,

vendor from a California state master contract that was competitively bid at the state level and therefore a local bidding process was not necessary. *See* Compton Request for Review at 1-2; California Multiple Award Schedule (CMAS), No. 3-03-70-0255(M). Compton provides a copy of the state master contract from which its vendor was selected. *Id.* at Attachment 7.

³⁸ *See* Allendale Request for Review; Chesterfield Request for Review; Compton Request for Review; Goose Creek Request for Review; Richland Request for Review.

³⁹ *Id.* *See also infra* para. 5 (indicating that applicants may purchase eligible services from "master contracts" negotiated by a third party such as a governmental entity and that an applicant is not required to satisfy the competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption).

⁴⁰ *See* Appendix B; *see also Ysleta Order*, 18 FCC Rcd at 26429, para. 50.

⁴¹ These seven petitioners are Galena Park, Fatima, St. Cecilia, Benson, Hmong, Meridian, and Irving (which has two separate applications at issue in this order).

⁴² Specifically, Irving used seven criteria in its vendor selection process to evaluate two vendors. *See* Irving 2006 Request for Review at Attachments 2 and 5; Irving 2007 Request for Review at Attachments 2 and 5. Higher points were awarded for lower costs, better reputation, better quality of goods or services, and other factors on a scale of 1 to 10. *Id.* Irving selected the vendor with the highest number of points in each of the cost categories and the highest overall point total. *Id.* The winning vendor's cost proposal was nearly half the cost of the competing proposal. *Id.* Galena Park considered two criteria in its vendor selection process, the direct costs of each bidder and the cost of transition to another provider. *See* Galena Park Request for Review at 2. Galena Park selected Nextel of Texas, Inc., because it offered the lowest price, it had previous working experience with the school, and there would be no disruption in service. *Id.* According to the evaluation worksheet used in Fatima's vendor selection process, each of the five evaluation criteria was given equal weighting. *See* Fatima Request for Review at 1, Attachment 6. Ultimately, however, the vendor selected offered the lowest price. *Id.* at 1. The decision matrix used in St. Cecilia's vendor selection process shows that "price" was given a weighting of 30 points, while the "requirements match" category was given a value of 50 points. *See* St. Cecilia Request for Review at 1, Attachment 1. After evaluating three bids, St. Cecilia selected the vendor that offered the lowest price. *Id.* at 1. Benson and Hmong each considered "cost" as a separate evaluation criterion, but neither applicant assigned the greatest weight to that criterion for bid evaluation purposes. Using existing Arizona state procurement standards, Benson gave equal weight to two of its evaluation criteria, i.e., cost and conformity with specification terms and conditions and other RFP requirements. *See* Benson Request for Review at 1-2. Hmong gave equal weight to each of the five evaluation criteria used in its process, i.e., ability to provide service, committed time by vendor, cost, past experience, and penalties for switching. *See* Hmong Request for Review at Attachment 3. Benson and Hmong ultimately selected the vendor with the highest number of points in the cost category and the lowest proposed price. *See* Benson Request for Review at 1-2; Hmong Request for Review at 1-2. The bid evaluation sheet used in Meridian's vendor selection process shows that the "quality of service, skill of vendor, and ongoing service and maintenance" category

Lee, and Florence, the record shows that each petitioner considered multiple bids, but only one bid was responsive to the FCC Form 470 postings.⁴³ As a result, in each of these three instances, the responsive bid necessarily offered the lowest price.⁴⁴ Therefore, consistent with the policy goals underlying the Commission's competitive bidding rules, the least expensive responsive service offering was ultimately selected by 10 of the 11 petitioners that failed to assign the highest weight to the price category.

11. Point Pleasant was the other applicant that involved a failure to assign the highest weight to the price category for purposes of bid evaluations. The record shows that Point Pleasant had a choice of two vendors from a New Jersey state master contract, Arch Wireless and Mid-State Paging, Inc.⁴⁵ When evaluating each proposal, Point Pleasant assigned an 80 percent weight to performance and a 20 percent weight to price.⁴⁶ In its request for review, Point Pleasant explains that it gave performance a higher weighting because based on its past experience, it wanted to ensure that the school received a functional service.⁴⁷ Point Pleasant explains that, in the previous funding year, it selected Arch Wireless because its proposal offered the lowest price.⁴⁸ Its equipment, however, did not work in Point Pleasant's buildings.⁴⁹ We understand why, in these specific circumstances, Point Pleasant considered it important to protect itself from a recurrence of that situation. In that regard, we note that consistent with E-rate program rules, Point Pleasant could have set up the bidding process in a way that disqualified Arch Wireless before even

was given 20 points, while the "price" category was given 10 points. *See* Meridian Request for Review at Attachment 1. Meridian, however, selected the vendor that offered the lowest price. *Id.* at 1.

⁴³ Killeen used a "Bid Evaluation Matrix" to determine whether two bids it received were responsive to its RFP. *See* Killeen Request for Review at 2-3. One bid was incomplete and was disqualified from further consideration. *Id.* Five criteria, including price, technical solution, vendor references, performance history, and distance from district, were used to evaluate the remaining bid. *Id.* According to Killeen, the remaining bid was selected because the vendor offered the lowest price. *Id.* Lee County and Florence each considered two bids in their vendor selection processes. *See* Lee County Request for Review at 2-3; Florence Request for Review at 3. Each had one bid that offered services that were not requested in the petitioners' FCC Forms 470. *Id.* Lee County and Florence each selected the vendor with the lowest proposed price and whose service offering was responsive to the FCC Forms 470. *Id.*

⁴⁴ *See* Killeen Request for Review at 2-3; Lee County Request for Review at 2-3; Florence Request for Review at 3.

⁴⁵ *See* Point Pleasant Request for Review at 2. We note that USAC also rejected three other funding requests of Point Pleasant on the ground that it did not have a contract in place when it submitted its FY 2004 FCC Form 471. *See* Point Pleasant Request for Review at 2 (regarding funding request numbers (FRN) 1170034, 1163803, and 1163830). However, we find, based on our review of the record, that USAC's findings in this regard were incorrect. Our review reveals that Point Pleasant signed a contract with Xtel Communications, Inc., on February 2, 2004, for FRN 1170034 and a multi-year contract with Business Automation Technologies, dba Data Network Solutions, on October 30, 2002, for FRNs 1163803 and 1163830. *Id.* at Attachments 3, 4. The record also shows that Point Pleasant filed its FCC Form 471 on February 3, 2004, after each contract was signed. *See* FCC Form 471, Point Pleasant Board of Education (filed Feb. 3, 2004). We therefore grant Point Pleasant's request for review with regard to these FRNs and remand the underlying application to USAC for further processing consistent with this order.

⁴⁶ *See* Point Pleasant Request for Review at 2.

⁴⁷ *Id.* Point Pleasant selected Mid-State Paging, Inc. for FY 2004 because its paging service was functional in its buildings and thus was the most cost-effective choice. *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

considering price as a factor.⁵⁰ We therefore grant its waiver request based on these unique circumstances. We recognize that if the petitioner had disqualified Arch Wireless from the bidding process based on past performance, then Mid-State Paging, Inc. would have been the lowest qualified bidder. Given these circumstances, we find that a waiver of our rules in Point Pleasant's case is appropriate and in the public interest.

12. In sum, based upon our review of the underlying record, we find that the 12 appeals by the petitioners listed in Appendix B conducted a competitive bidding process that resulted in the selection of the most cost-effective service offering.⁵¹ Moreover, we find no evidence of any violation of state or local procurement laws. We thus believe that rejecting the petitioners' funding requests is not warranted in these circumstances. Rather, we find that a limited waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules is in the public interest given the facts of each case and that this determination results in more effective implementation of Commission policy on competitive bidding.⁵² In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds. Accordingly, we waive sections 54.503(c)(2)(ii) and 54.511(a) of the Commission's rules for the petitioners listed in Appendix B and remand the underlying applications to USAC for further action consistent with this order.

13. Consideration of All Bids Submitted. USAC denied funding to two petitioners, the School District of the City of River Rouge (River Rouge) and Whittier City School District (Whittier), on the ground that they failed to consider all bids submitted in response to their FCC Form 470 postings.⁵³ Specifically, the record shows that River Rouge received two bids in response to its FCC Form 470 posting and request for quotes (RFQ), one from Advanced Networking Group (ANG) and the other from SER Communications.⁵⁴ River Rouge evaluated each bid, despite the fact that they were both filed after the submission deadline.⁵⁵ Based on state and local bidding requirements for establishing a qualified bid,

⁵⁰ Specifically, Point Pleasant could have used a multi-tiered bid evaluation process in which the first tier could have assessed whether a proposal satisfied minimum technical capabilities, such as the quality of service. Bids under this tier could have been evaluated on a pass-fail basis, which is currently allowed. All bids satisfying first tier requirements then could have moved to the next tier of the evaluation process where other criteria could have been assessed, including price. See USAC website, Schools and Libraries, Schools and Libraries Applicants, Service Providers, <http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx> (last visited Apr. 5, 2011).

⁵¹ See Irving 2005 Request for Review at Attachments 2 and 5; Irving 2006 Request for Review at Attachments 2 and 5; Compton Request for Review at 1-2, Attachment 7; Killeen Request for Review at 2-3; Meridian Request for Review at 1-2; Galena Park Request for Review at 2; Fatima Request for Review at 1; St. Cecilia Request for Review at 1; Lee County Request for Review at 2-3; Florence Request for Review at 3; Benson Request for Review at 1-2; Hmong Request for Review at Attachment 3; Point Pleasant Request for Review at 2.

⁵² 47 C.F.R. §§ 54.504(b)(2)(vii), 54.511(a).

⁵³ See Whittier ADL (stating that Whittier did not carefully consider the wireless Internet access proposal submitted by Advanced Scientific Applications, Inc.); Letter from USAC, Schools and Libraries Division, to Donald Fitzpatrick, River Rouge Senior High School (dated Oct. 12, 2007) (River Rouge COMAD) (stating that, during post-funding review, River Rouge failed to provide documentation to indicate that it carefully considered all bids received and chose the most cost-effective solution). River Rouge was then subject to a funding commitment adjustment by USAC, which rescinded its funding commitment. See River Rouge COMAD. In light of our decision herein, we direct USAC to discontinue recovery action against River Rouge pending completion of its review of River Rouge's underlying application on remand consistent with this order.

⁵⁴ See River Rouge Request for Review at 4-5; River Rouge FCC Form 470.

⁵⁵ River Rouge Request for Review at 5.

River Rouge subsequently rejected SER Communications' bid because it was incomplete and failed to respond to all of the items requested in the RFQ.⁵⁶ In its request for review, River Rouge argues that it used price as a primary consideration in selecting the ANG proposal and determined that ANG presented the most cost-effective service offering.⁵⁷ We find that nothing in the record indicates that River Rouge evaluated the responsive bidders in a manner inconsistent with E-rate program rules. The record shows that River Rouge considered each bid it received and rejected the SER Communication's bid only after determining that the bid was incomplete. Finally, nothing in the record demonstrates any evidence of waste, fraud or abuse, or misuse of funds.

14. The record shows that Whittier also considered all bids. Whittier received two bids in response to its FCC Form 470 posting seeking wireless Internet access on a district-wide basis.⁵⁸ One bid, submitted by its current Internet service provider, Trillion Partners, Inc., (Trillion), proposed to provide wide area network (WAN) services for wireless Internet access to all 14 district sites for a monthly charge of \$17,571.⁵⁹ According to Whittier, the Trillion proposal was reflected in a detailed proposed service agreement.⁶⁰ The other bid, submitted by Advanced Scientific Applications, Inc., (ASA) proposed a monthly charge of \$69,986 for dedicated wireless Internet access for digital signal level 3 (DS3) lines for each district site.⁶¹ No other detail was provided in the ASA proposal.⁶² Upon further inquiry into the specifics of ASA's proposal, Whittier learned that ASA could not provide wireless Internet access on a district-wide basis, which was precisely the service that Whittier was seeking.⁶³ Based on our review of the record, we find that Whittier also evaluated the responsive bidders consistent with E-rate program rules. The fact that Whittier initiated contact with ASA to discuss the proposal's terms and conditions, and only rejected the proposal after learning that ASA could not provide the requested services leads us to conclude that Whittier carefully considered ASA's submission. Moreover, there is no evidence of waste, fraud or abuse, or misuse of funds.

IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the requests for review for those petitioners listed in Appendices A and C ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

16. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3

⁵⁶ *Id.*

⁵⁷ *Id.* at 6.

⁵⁸ See Whittier Request for Review at 5-6; Whittier FCC Form 470.

⁵⁹ Whittier Request for Review at 5.

⁶⁰ *Id.*

⁶¹ *Id.* at 6.

⁶² *Id.*

⁶³ *Id.* at 6-7. Whittier also argues that ASA had no wireless capability and that its bid was unresponsive, incorrect and incomplete. *Id.* at 14.

and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), sections 54.503 and 54.511 of the Commission's rules, 47 C.F.R. §§ 54.503, 54.511 ARE WAIVED for those petitioners listed in Appendix B to the extent provided herein.

17. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL DISCONTINUE its recovery actions against Killeen Independent School District, Compton Unified School District, Meridian Joint School District 2, and the School District of the City of River Rouge, to the extent provided herein.

18. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of the remanded applications and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

19. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Applicants Selecting Vendor Based on Price as the Primary Factor

Applicant	Application Number	Funding Year	Date of Appeal
Allendale County School District/ Service Associates, Inc. Cedar Mountain, NC	415662	2004	Mar. 20, 2006
Chesterfield County School District/ CNIC, Inc. Chesterfield, SC	581950	2007	Dec. 19, 2007
Compton Unified School District Compton, CA	409682	2004	Oct. 3, 2005
Goose Creek Consolidated Independent School District Baytown, TX	410801, 411530, 414988, 415200, 415431	2004	Nov. 22, 2005
Richland County School District One Columbia, SC	507445	2006	May 18, 2007

APPENDIX B

Applicants Receiving Waiver of the Commission's Rules

Applicant	Application Number	Funding Year	Date of Appeal
Benson Unified School District 9 Benson, AZ	473356	2005	Aug. 22, 2007
Florence County School District 3/ Service Associates, Inc. Lake City, SC	449171	2005	Sept. 12, 2006
Galena Park Independent School District Houston, TX	445018	2005	Oct. 10, 2006
Hmong Academy Charter School Saint Paul, MN	512377	2006	Sept. 20, 2007
Irving Independent School District Irving, TX	463711	2005	Apr. 25, 2005
Irving Independent School District Irving, TX	517462	2006	Jan.31, 2007
Killeen Independent School District Killeen, TX	418306	2004	Dec. 20, 2006
Lee County School District/ Service Associates, Inc. Bishopville, SC	449189	2005	Aug. 25, 2006
Meridian Joint School District 2 Meridian, ID	518833	2006	Nov. 21, 2008
Our Lady of Fatima School Jackson Heights, NY	528095	2006	Mar. 23, 2007

Point Pleasant Board of Education Point Pleasant, NJ	404069	2004	Nov. 18, 2005
St. Cecilia School Pennsauken, NJ	636075	2008	Sept. 30, 2008

APPENDIX C**Applicants Considering all Submitted Bids**

Applicant	Application Number	Funding Year	Date of Appeal
School District of the City of River Rouge River Rouge, MI	381953	2003	Dec. 12, 2007
Whittier City School District Whittier, CA	536931	2006	May 14, 2007

FRN'S 1845078

RFP: S2009-0010 Plain Old Telephone Service (POTS) 1fb Lines

Number of Responses received: 3

Awarded to Qwest

Vendor Name	Proposed cost
Qwest	Total estimated firm fixed price monthly rate for a 5 year term: \$5,497.80
Integra	Not technically acceptable
MicroTech Tel	Total estimated firm fixed price monthly rate for a 5 year term: \$5,610.00

NOTE 11

Robert A. Curran Sr., PMP, Assistant Superintendent/CIO
711 E. San Rafael Street, Colorado Springs, Colorado 80903

(719) 520-2367

Fax: (719) 520-2978

robert.curran@d11.org

04/26/2012

Dear Sir,

I certify that the "FRN proposal comparison sheets" listed below were created as an accurate summarization of the evaluation and selection process for each of these FRNs. Although they were drafted on 6/24/2009 and were not contemporaneous with the evaluation and selection process, I certify that they accurately reflect the results and conclusions of that process.

RFP Number	FY 2009 FRN	FY 2010 FRN
S2009-0008	1845087	1944825
S2009-0010	1845078	1944533

A handwritten signature in black ink, appearing to read 'Ray H. Caplinger'.

Raymond H. Caplinger
Director Networking and Telecommunications
Colorado Springs School District 11

A handwritten signature in black ink, appearing to read 'Kristine R. Odom'.

Kristine R. Odom
Executive Director, Procurement
Colorado Springs School District 11

FRN'S 1845087

RFP: S2009-0008 Telephone Services

Number of Responses received: 4

Awarded to tw telecom

Vendor Name	Proposed cost
Tw telecom	Total estimated firm fixed price monthly rate for a 5 year term: \$9,395.00;
PAETEC	Total estimated firm fixed price monthly rate for a 5 year term: \$11,995.47
MicroTech Tel	Not technically feasible; Total estimated firm fixed price monthly rate for a 5 year term: \$7,997 plus one time installation of fiber optic fee of \$21,050
Qwest	Total estimated firm fixed price monthly rate for a 5 year term: \$10,760.51

E-Rate Internet Service Provider RFP

Proposer Certification

Proposer's Certification

Within our response, **tw telecom** offers to furnish to the District the products, services, and equipment requested in accordance with the specifications described herein:

Proposer: **tw telecom holdings inc.**

Address: 10475 Park Meadows Drive

City: Littleton

State: Colorado

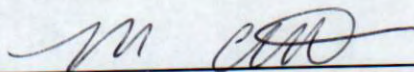
Zip Code: 80124

Telephone No. 303-542-6400

Name: Rick Corbett

Title: General Manager

Signature: _____



Confidentiality Statement

The information contained in this Response is proprietary and confidential and is being provided to Colorado Springs School District 11 (District) on a strictly confidential and limited use basis. Title to all copyright, trademark, trade secret, intellectual property and other ownership rights in the subject matter of this proposal shall be and remain exclusively with **tw telecom holdings, inc.** or its affiliates (**tw telecom**), even with respect to items that were created by **tw telecom** specifically in connection with its response to The District's Request for Proposal. No title, copyright, trademark, trade secret, intellectual property or other ownership rights to property held by **tw telecom** are transferred to The District.

The District shall keep the information in this response confidential and shall not duplicate, distribute or otherwise disseminate any such information except as required for purposes of evaluating this response. The District shall cause its agents and employees, and any other parties or persons who may have access to the information herein, to observe and protect the confidentiality of such information and The District shall safeguard the information herein with the same degree of care that The District accords its own confidential information, but in no event less than a commercially reasonable degree of care. The District shall be liable for any breach of confidentiality by any of its employees, agents or other persons who obtain access to or possession of any of **tw telecom**'s information from or through the District.

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Price Quote

Quote Date: 1/5/2009
Term: 60 months

Customer Name: Colorado Springs School
District 11

Market: Colorado Springs
Sales Rep: Steve Stonestreet

Product	Address	Pricing	
		MRC	NRC
Internet Access (200 mbps)	711 E. San Rafael St. Colorado Springs, CO 80903-2542	\$4,900.00	\$0.00
Internet Transport (Ethernet 1 Gbps)	711 E. San Rafael St. Colorado Springs, CO 80903-2542	\$560.00	\$0.00
Total Charges		\$5,460.00	

tw telecom, inc. Terms and Conditions:

Pricing is contingent upon available facilities and/or capacity and subject to determination by **tw telecom**.

This quote is BUDGETARY only. Any additional expense that may be incurred by **tw telecom, inc.** may cause the quoted amount to increase. Accordingly, **tw telecom** will then restate revised pricing to the Customer for approval to proceed with the Service Order at the new price.

This Quote is valide for 90 days from issue date.

Pricing does not include applicable taxes, surcharges or other fees.

This Quote does not guarantee delivery of service. Service delivery and installation are subject to determination by **tw telecom**.

Pricing set forth above assumes 100% early termination liability if the Customer terminates a Service for its convenience before fulfillment of the Service Term.



January 5, 2009

Kris Odom, District Contracting Office
Procurement and Contracting Department
Colorado Springs School District No. 11
1115 North El Paso Street
Colorado Springs, CO 80903

Dear Ms Odom:

Based on a thorough assessment of this invitation to Bid, Qwest is submitting this response for your evaluation. Qwest is an industry leader in voice and data networks, equipment design, installation, and maintenance.

Qwest and Colorado Springs School District 11 have a long standing relationship. By staying with Qwest, the District will minimize any disruption in services that are typically encountered during transitions to Competitive Local Exchange Carriers (CLEC's) and also receive the benefit of highly competitive pricing for the requested services. District 11 has the benefit of working with an extensive account team that includes the Direct Qwest account team of David Flierl and Kristin Scott and Andy Wells from Networth LLC.

District 11 has our commitment and resources dedicated to ensure that the highest attention to accuracy, quality and performance are provided on an on-going basis. As a true business partner, we continue to focus on every level of our business relationship and ensure that we are here to support District 11 with innovative technologies and resources to support your business operations. We hope that you find this response to be complete and look forward to servicing your business requirements.

Sincerely,

Two handwritten signatures in blue ink. The first signature is 'David Flierl' and the second is 'Andy Wells'.

David Flierl, Kristin M Scott, and Andy Wells
Global Account Managers
1801 California St, Ste 1800
Denver, CO 80202
303-391-8337

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Legal Notices

Qwest thanks you for the opportunity to respond and is confident we will be able to negotiate an agreement containing terms and conditions that are mutually acceptable to both parties based upon the attached submission and any Qwest tariffs, schedules or standard offerings applicable to the offering proposed. Qwest has attached a copy of its standard agreement(s) for review and discussion.

Qwest Communications Corporation ("QCC") provides interstate services in accordance with Qwest's Rate and Service Schedule or intrastate services in accordance with the applicable QCC Tariff, catalog, price list or other similar document in the subject state, all of which are incorporated herein by this reference. QCC also provides unregulated, internet-based services such as VOIP, iQ Networking™, Private Routed Network, Managed Firewall and Security - Virtual Private Networking (MFW-VPN), and Hosting Services.

Qwest is proud to support education and libraries through the USF E-Rate discount program. To qualify for E-Rate discounts, schools or libraries must comply with all program requirements including but not limited to the E-Rate application process, technology plan approval, reimbursement, and invoicing prerequisites. Upon receipt of all properly executed E-Rate forms and related documents, Qwest will apply the E-Rate discounts. Qwest's sales account team and the State's E-Rate coordinator will work together to ensure timely application of discounts under the USF E-Rate program.

Colorado Springs School D11

1/5/2009



Table 1: Tiered Gigabit Ethernet Bandwidth With a New 3 Year Term

<u>Bandwidth</u>	<u>ELA loop 3 Year</u>	<u>IQ Port 3 Year</u>	<u>Monthly 3 Year Total</u>	<u>Install *</u>
100 Mbps	\$ 1,378.31	\$ 2,600.00	\$ 3,978.31	\$ 1,320.00
100 Mbps with Protect	\$ 1,969.25	\$ 2,600.00	\$ 4,569.25	\$ 1,320.00
200 Mbps	\$ 1,982.74	\$ 4,550.00	\$ 6,532.74	\$ 1,440.00
300 Mbps	\$ 2,586.32	\$ 6,200.00	\$ 8,786.32	\$ 1,560.00
400 Mbps	TBD**	\$ 7,560.00	\$ 7,560.00	\$ 1,680.00
500 Mbps	TBD**	\$ 8,710.00	\$ 8,710.00	\$ 1,800.00
600 Mbps	TBD**	\$ 9,690.00	\$ 9,690.00	\$ 1,920.00
700 Mbps	TBD**	\$ 10,550.00	\$ 10,550.00	\$ 2,040.00
800 Mbps	TBD**	\$ 11,290.00	\$ 11,290.00	\$ 2,160.00
900 Mbps	TBD**	\$ 11,950.00	\$ 11,950.00	\$ 2,280.00
1000 Mbps	TBD**	\$ 12,500.00	\$ 12,500.00	\$ 2,400.00
1000 Mbps with Protect	TBD**	\$ 12,500.00	\$ 12,500.00	\$ 2,400.00

Table 2: Tiered Gigabit Ethernet Bandwidth With a New 5 Year Term

<u>Bandwidth</u>	<u>ELA loop 5 Year</u>	<u>IQ Port 5 Year</u>	<u>Monthly 5 Year Total</u>	<u>Install *</u>
100 Mbps	\$ 1,378.31	\$ 2,470.00	\$ 3,848.31	\$ 1,320.00
100 Mbps with Protect	\$ 1,927.10	\$ 2,470.00	\$ 4,397.10	\$ 1,320.00
200 Mbps	\$ 1,982.74	\$ 4,322.50	\$ 6,305.24	\$ 1,440.00
300 Mbps	\$ 2,586.32	\$ 5,890.00	\$ 8,476.32	\$ 1,560.00
400 Mbps	TBD**	\$ 7,182.00	\$ 7,182.00	\$ 1,680.00
500 Mbps	TBD**	\$ 8,274.50	\$ 8,274.50	\$ 1,800.00
600 Mbps	TBD**	\$ 9,205.50	\$ 9,205.50	\$ 1,920.00
700 Mbps	TBD**	\$ 10,022.50	\$ 10,022.50	\$ 2,040.00
800 Mbps	TBD**	\$ 10,725.50	\$ 10,725.50	\$ 2,160.00
900 Mbps	TBD**	\$ 11,352.50	\$ 11,352.50	\$ 2,280.00
1000 Mbps	TBD**	\$ 11,875.00	\$ 11,875.00	\$ 2,400.00
1000 Mbps with Protect	TBD**	\$ 11,875.00	\$ 11,875.00	\$ 2,400.00

*** NRC Waiver.** Qwest NRCs specified above are waived so long as such Service ordered hereunder and subject to this waiver remains installed and used by Customer for at least twelve (12) consecutive months ("Minimum Waiver Term").

****Loops 400 Mbps and faster will be priced ICB when needed by the District.** The monthly totals for 400 Mbps and above do not include any loop prices.



ORIGINAL

3350 EASTBROOK DR.
FORT COLLINS, COLORADO
80525-5731

phone 970.212.0700
toll free 800.935.6527
fax 877.629.6627
frii.com

NOTE 16

January 5, 2009

Kris Odom, CPPO, District Contracting Officer
Procurement and Contracting Department
Colorado Springs School District No. 11
1115 North El Paso Street
Colorado Springs, CO 80903

Dear Ms. Odom:

Front Range Internet, Inc. (FRII) is pleased to submit our response to the E-Rate Internet Service Providers Services Request for Proposal # S2009-0009. Please find enclosed one (1) original and four (4) copies of the proposal.

FRII is looking forward to the opportunity to establish the relationship with the Colorado Springs School District No 11. The team here is dedicated to ensuring you have an excellent outcome. With FRII's extensive experience in providing connectivity to school districts and corporations throughout the state of Colorado, we are ideally suited to meet your requirements. We understand the importance of finding a partner who can provide a highly reliable, secure and cost effective solution to meet The Colorado Springs School District No 11's needs.

This proposal was prepared by Ms. Betsy Craig. Should you have questions related to this response, her contact information is below:

Ms. Betsy Craig
3350 Eastbrook Drive
Fort Collins, CO 80525
betsyc@frii.com
970-212-0711

You have my personal commitment to the successful deployment of this service.

Sincerely,

A handwritten signature in blue ink that reads "Shawna Killen".

Shawna Killen
Vice President of Sales and Business Development



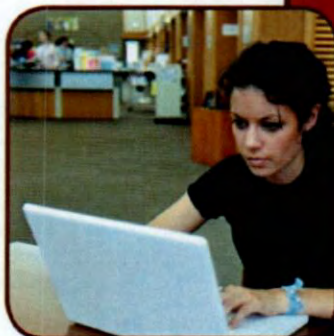
Request for Proposal - Colorado Springs School District 11
S2009-0009



Submitted by:

FRII
Front Range Internet, Inc.
3350 Eastbrook Drive
Fort Collins, CO 80525

January 5, 2009



variety of time intervals. These are available to Colorado Springs School District through the myFRII interface.

- **Network packet delivery statistics:**

In a simple test of 1000 packets, FRII had 0% packet loss.

- **Minimal network jitter:**

In a test of 1000 packets from a server in FRII's Fort Collins data center to a client in Boulder, we saw only a .622 ms deviation in packets. Average response time was 3.9ms (milliseconds).

- **Automatic network outage management notifications:**

Customer notifications are provided via FRII's Service Status Announcement system. Additionally, our NOC will attempt to contact customers via phone on any alerts for their services using the contact numbers provided.

- **Escalation procedures for problem resolution for data connectivity, reliability, security, and billing issues.**

FRII has an internal network escalation process. Customers may also ask to be escalated at any time. In addition to a 24x7x365 NOC, FRII always has engineers on call in the event of an emergency.

Identify and discuss your circuit and service quality monitoring and reporting services.

The FRII solution will be provided over Qwest QMOE. This QMOE circuit is backhauled to our Denver facility where it is routed by the redundant core FRII network built on carrier grade Juniper routers. These routers are continuously monitored for CPU, performance, and availability. The traffic is then routed out one of our two Gigabit circuits to the Internet or over one of our peering connections with the Rocky Mountain Internet Exchange (RMIX) and Fort Collins Community Network. The Front Range Gigapop is connected to the RMIX, which allows superior performance when exchanging traffic with other Gigapop/MNT members. The Reporting on the customer circuit is provided by FRII's myFRII web based system. In addition any network event is monitored via a Nagios system, and customers are alerted via FRII's FSS (FRII Service Status) system. This system will notify customers of network wide events via email.

Provide in detail your proposed system and functionality.

FRII will provide a 100Mb protected QMOE circuit to the address specified. The 'protected' circuit will be able to utilize two redundant fibers from the location to the Qwest central office. Pricing for additional layers of redundancy can be utilized to provide higher levels of reliability upon request. This QMOE will traverse the Qwest QMOE network to FRII's datacenter at 910 15th Street in Denver. From here it will

connect into FRII's redundant core and travel to the Internet via one of FRII's redundant upstream connections.

The same QMOE circuit can be used to provide additional VLANs to connect Colorado Springs School district to other providers should the school wish to pursue network level redundancy with another provider. The QMOE solution provides an Ethernet based solution with either a Copper or Fiber hand off.

Annual Report

As a privately held company, FRII does not utilize annual reports or audited financial statements. We will supply the last 3 years of financial statements upon request with a signed non-disclosure agreement.

Pricing Schedules for all levels of services available:

Setup is \$1500.00 for either a 3 year or a 5 year term.

3 Year Commitment \$ 4,550.00 / Month

5 Year Commitment \$ 4,375.00 / Month

Handoff will be at the Qwest equipment at no extra charge. Environmental and location requirements for equipment will be provided as part of the service installation process. If additional services are needed upon install, FRII is able to provide these services through our professional services department at an additional fee.

Billing requirements

- a. All charges presented on your monthly billing statement will include a description of the service, billing term date, and service ID (username). Also included is the quantity, price per unit, and total for each line item. FRII's billing system is highly customizable so if there are specific items that need to be presented on your monthly invoices we are able to customize it to suit your needs.
- b. Your monthly invoice will display information on each service that you are purchasing from FRII. We can include any information that you need on your invoices.
- c. The service that is being recommended to you will reflect bandwidth that is combined usage for multiple locations.
- d. FRII will keep the District's sales/use tax exempt number on file for future reference.
- e. See Attachment B for a copy of a sample invoice that you will see for the services purchased through FRII.
- f. FRII provides a web based account management tool called myFRII which allows customers to login and view all invoices and make payments online using a secure web page.

**E-Rate Internet Service Provider
Services (ISP)**

Response For

**Request for Proposals: #
S2009-0009**

For E-Rate Fiscal Year 2009 - 2010

Response dated: January 2, 2009

Presented By:

Centennial Board of Cooperative Educational Services



**CENTENNIAL
BOCES**

*"Joining forces to enrich educational
opportunities for students."*

**830 South Lincoln Street
Longmont, Colorado 80501**

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EAGLE-Net Internet Access Pricing

CBOCES E-Rate SPIN: 143026147	Bandwidth (Mbps)	Monthly Recurring Charge (MRC)	Annual Cost
Internet Usage (*Not-to-Exceed): -Commodity Internet	100.0	\$5,000.00	\$60,000.00
Research and Education Networks: -National LambdaRail (NLR) -Abilene (Internet2)	100.0	\$0.00	\$0.00
1st Year Non-Recurring Charge (NRC) for Start-Up Fees - Includes: -Initial Equipment Costs -Port / Cross-Connect Costs -Engineering / Design Costs (Can Be Billed Monthly)		-	\$2,400.00
Local Loop / Internet Conduit (Optional TBD)		-	-
Total			\$62,400.00

Pricing Options:

Bandwidth (Mbps)

Dependant on the available bandwidth on the Local Loop connection, the purchased Bandwidth can be scaled up or down in 1.0 Mbps increments to 1.0 Gbps or greater.

Local Loop / Internet Conduit Option

The EAGLE-Net pricing is exclusive of any required Local Loop (Internet Conduit) circuit. The CBOCES can partner with the District's telecom provider for this connection and if desired, can contract on behalf of the District for this connection.

Pricing Notes:

*The Monthly Usage Charge is presented as Not-to-Exceed pricing - As the number of participants and the collective amount of Internet bandwidth purchased by EAGLE-Net increases, the cost / Mbps of Internet bandwidth will decrease.

Letter of Agency

Colorado Springs School District 11 Billed Entity Number: 142312

Letter of Agency For FY 11 (2008 - 2009); FY 12 (2009 - 2010); FY 13 (2010 - 2011);
FY 14 (2011 - 2012)

I hereby authorize eRate 360 Solutions, LLC and its employees: Keith C. Oakley, Steve Tenzer, Rich Larson, Carlos Alvarez, Matt Hetman, Fred Josephs, and Bert Garofano to submit FCC Form 470, FCC Form 471, and other E-rate forms, and to submit various change applications such as SPIN changes and service substitutions, to the Schools and Library Division of the Universal Service Administrative Company on behalf of **Colorado Springs School District 11** for all eligible services outlined in the most current "Eligible Services List" published by USAC. I understand that, in submitting these forms on our behalf, you are making certifications for **Colorado Springs School District 11**. By signing this Letter of Agency, I make the following certifications

- (a) I certify that **schools in our district** are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.
- (b) I certify that our **school district** has secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our **school district** is covered by a technology plan(s) that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s):
 - ☐ an individual technology plan for using the services requested in this application; and/or
 - ☒ higher-level technology plan(s) for using the services requested in this application; or
 - ☐ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.
- (d) I certify that the services the district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).
- (e) I certify that our **school district** has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (j) I certify, on behalf of the entities covered by this Letter of Agency, that any funding requests for internal connections services, except basic maintenance services, applied for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).
- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to **eRate 360 Solutions, LLC** for E-rate submission is true.

District: Colorado Springs School District 11

Date: Jan 21, 2011

Signature: Murray Basinger

Printed Name: Murray Basinger

Title: District Contracting officer